IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

Writ Petition No.1563 of 2005

M/s Bharat Petroleum Corpn Ltd. ...Petitioners
vs
M/s Atur India Pvt Ltd. ...Respondents

Mr S.R. Page for the petitioners.
Mr. Uday Warunjikar for respondents.

CORAM: J.N. PATEL,Acg C.J.

DATE: March 14, 2007.

P.C.:-

Heard the learned counsel for the parties.

This matter has been placed before me, as on the earlier occasion i.e. on 25th July 2006, while dealing with the subject matter of the petition, this court observed that the lower court ought to have framed a preliminary issue in the matter which has been raised by the original defendants in paragraphs 23 and 25 of the written statement. The learned counsel for the plaintiffs has drawn attention of this court to a recent decision rendered by a learned Single Judge of this court in the case of Bharat Petroleum Corporation, Ltd Bombay vs Rustom Behramji Colah (Dr) and ors 2006 (6) Mh.L.J.42 and submits

that the plaintiff wants to prosecute its suit before the trial court and, therefore, certain observations made by this court in paragraph 2 of the order dated 25th July 2006 may be expunged or at least it may be clarified that the trial court would not be influenced by such observations.

This petition can be disposed of with a direction to the trial court to frame a preliminary issue in view of the specific plea take by the petitioners (original defendants) in paras 23 and 25 of the written statement and then proceed to decide the same and dispose of the mater in accordance with law.

Interim order to stand vacated. Petition stands disposed of accordingly.

Liberty to the parties to move the trial court for expeditious disposal of the suit.

ACTING CHIEF JUSTICE